good harness composition. The defendant, G. Jamieson, entered the business in Aberdeen under the name "G. Jamieson and Co." Due to the similarity of names alone, the defendant was getting trade intended for the plaintiff. An injunction was refused.[2] In another case the plaintiffs, the Valentine Meat Juice Company, had established such a wide reputation for their meat extracts under the name "Valentine's," that the court found that that name connected with meat extracts had acquired a secondary meaning, so that customers in asking for "Valentine's" always meant the plaintiff's goods. The defendant, the Valentine Extract Company Limited, was enjoined from using the name Valentine in any way in connection with a meat extract.[3] From these cases it appears that the test is, not whether the defendant is trading on the plaintiff's reputation, but whether he is doing so by "passing off" his goods as the plaintiff's. The defendant must use his name honestly in his business; he must not use it in such a way as to represent that his goods are the plaintiff's. In the ordinary case of similarity of names, he is not so doing, but when the plaintiff's name in connection with an article has acquired a secondary meaning, then it has become impossible for the defendant to sell under that name without representing his goods to be the plaintiff's.[4] The decisions in the American cases on this subject seem to be in accord with the foregoing principles.[5]

The notion that one has a special right to use his name in business because it is his own is erroneous. Smith has as much right to enter the soap business under the name Jones and Company as Jones has.[6] The cases cited above show that neither of them in using that name will be allowed to overstep the bounds of fair competition. It is not fair competition for a man even by the simple use of his name to pass his goods off as another's. It is not going much farther to say that it is not fair competition where the defendant, though the simple use of his name does not enable him to pass his goods off as the plaintiff's, is nevertheless, as in the Jamieson case, trading on the plaintiff's reputation. It is not fair to the plaintiff who established the reputation, nor to the public who are led to make the natural mistake of buying from the wrong man. On principle, then, the broad rule laid down in the article, that no one shall use any name so as to trade on someone else's reputation, seems desirable.

NECESSARY PARTIES. — The rules governing the joinder of parties as administered by the common law courts seem to be based upon the technical position of the parties rather than upon the actual interests involved.[1] Equity, however, adopts a broader principle and requires as parties all persons in any way interested in the result of the suit.[2] This is but an example of the desire of equity to do justice on the merits of each case, and by having all the parties before it make its decree a final adjudication

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[2] Jamieson and Co. *v.* Jamieson, 15 Rep Pat. Cas. 169.
[3] Valentine Meat Juice Co. *v.* Valentine Extract Co. Limited, 83 L. T. R. 259.
[4] J. and J. Cash Limited *v.* Joseph Cash, 86 L. T. R. 211.
[5] Singer Manufacturing Co. *v.* June Manufacturing Co., 163 U. S. 169; Walter Baker and Co. *v.* Baker, 77 Fed. Rep. 181.
[6] See Hopkins, Unfair Trade, § 51.

[1] Story Eq. Pl. 10th ed. § 76.
[2] Cockburn *v.* Thompson, 16 Ves. Jr. 325.

on the whole subject.[8] This general rule is, however, relaxed in the case of parties having a merely formal interest in the controversy, the joinder of such parties only encumbering the record, and not materially aiding the settlement of the case.[4] Moreover, if parties having even an actual interest are inaccessible, as when they are without the jurisdiction, the court will often go far to settle the controversy between the parties before it,[5] especially if it appears that a strict adherence to the rule would lead to a failure of justice.[6] On the other hand, in its endeavor to do justice in the case before it the court cannot trench upon the principle common both to courts of equity and law that they cannot finally settle the rights of individuals not before them.[7] Just how far a court can go in dispensing with parties who would ordinarily be necessary is a difficult question. Thus a suit has been allowed against one of several partners, the others being without the jurisdiction, on the ground that the claims of the litigants could be settled without prejudicing the rights of the absent parties;[8] while in a similar suit against one of several part owners of a vessel, the court dismissed the suit on the ground that no just settlement could be made in the absence of the other owners.[9]

The frequency with which this question has arisen has led to many attempts to lay down fixed rules for the exercise of the courts' discretion, and accordingly several attempts to classify parties who can and who cannot be dispensed with have been made, based on the separability of their interests.[10] The danger of any rigid rule is illustrated by a contemporary New Jersey decision. A bill was brought in New Jersey by a stockholder in a Maine corporation alleging that the defendant, a New Jersey corporation, was, by virtue of an agreement with the Maine corporation, in possession of a large portion of its assets, and that the defendant had violated its agreement and was about to transfer these to a New York corporation. The bill prayed that such transfer be restrained. It had already been decided that the court had no jurisdiction over the New York corporation,[11] and it was now moved to dismiss the suit on the ground that the New York corporation was an indispensable party defendant. The court dismissed this motion. *Wilson* v. *American Palace Car Co.*, 58 Atl. Rep. 195. Since the New York corporation was to be the direct recipient of the assets in question, it would seem to be sufficiently interested in a suit to restrain their transfer to constitute it an indispensable party under the attempted classifications above referred to.[12] It seems clear, however, that in this particular instance more justice would be done by proceeding to settle the controversy between the Maine and New Jersey corporation, since the New York corporation could easily have appeared at the trial had it considered its interests worth protecting. The decision shows that a fixed rule is impracticable, and that each case must be left to the discretion of the court, with the one limitation that the interests of absent persons must not be seriously prejudiced.

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[8] Poor *v.* Clark, 2 Atk. 515.
[4] Cockburn *v.* Thompson, *supra.* Here the number of parties was extremely large.
[5] 1 Daniels Chan. Pl. & Prac. 150.
[6] Per Lord Cottenham, in Mare *v.* Malachy, 1 Myl. & Cr. 559.
[7] Burnham *v.* Kempton, 37 N. H. 485.
[8] Darwent *v.* Walton, 2 Atk. 510; see Lawrence *v.* Rokes, 53 Me. 110.
[9] Nudgett *v.* Gager, 52 Me. 541.
[10] Shields *v.* Barrows, 17 How. (U. S.) 130.
[11] Wilson *v.* American Palace Car Co., 55 Atl. Rep. 997.
[12] Lawrence *v.* Rokes, *supra;* Chadbourne *v.* Coe, 10 U. S. App. Cas. 78.